

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

'99 SEP 23 AM 57

IN THE MATTER OF:)
)
BP Amoco Chemical Company,) Docket No. **CAA-5-99-036**
Joliet, Illinois)
)
Respondent.) Proceeding to Assess an
) Administrative Penalty
) under Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

Administrative Complaint

1. This is an administrative action for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. Part 22, as amended at 64 Fed.Reg. 40138 (1999).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.

3. The Respondent is BP Amoco Chemical Company ["Amoco" or "Respondent"], a corporation doing business in the State of Illinois.

Statutory and Regulatory Background

4. On April 22, 1994, pursuant to Section 112 of the Act, U.S. EPA published as a final rule, the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic

Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations and Wastewater ("the HON"), found at 40 C.F.R. Part 63, Subpart G. 59 Fed. Reg. 19468.

5. The Federal regulation found at 40 C.F.R. § 63.113(a) requires the owner or operator of a Group I process vent to reduce emissions of organic hazardous air pollutants ("HAP") by using a flare, reduce emissions of total organic hazardous air pollutants by 98 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent, or achieve and maintain a total resource effectiveness ("TRE") index value greater than 1.0 at the outlet of the final recovery device, or prior to the release of the vent stream to the atmosphere if no recovery device is present.

6. The Federal regulation found at 40 C.F.R. § 63.103(b)(3) requires that performance tests be conducted at maximum representative operating conditions for the process, or that the source may test under minimum or maximum representative operating conditions, whichever results in a lower emissions reduction.

7. The Federal regulation found at 40 C.F.R. § 63.114(e) requires owners and operators of process vents to establish a range of operating parameters that indicates proper operation of the control or recovery device.

8. The Federal regulation found at 40 C.F.R. § 63.152(b)(2) requires that for each monitored parameter for which a range is

required to be established, the Notification of Compliance Status shall include the rationale for the specific range for each parameter for each emission point, including any data and calculations.

General Allegations

9. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), the Attorney General of the United States has concurred with the determination of the Administrator of U.S. EPA, each through their respective delegates, that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

10. Amoco owns and operates a synthetic organic chemical manufacturing facility located at 23425 Amoco Road in Channahon, Illinois.

11. Amoco is a "person" as defined in 42 U.S.C. § 7602.

12. Amoco's Isophthalic Acid production unit is subject to the provisions of 40 C.F.R. Part 63, Subpart G.

13. Richard Karl, Acting Director of the Air and Radiation Division sent a Finding of Violation ("FOV") to Amoco on January 11, 1999. The FOV alleged violations of 40 C.F.R. §§ 63.113(a), 63.103(b)(3), and 63.152(b)(2).

14. On February 9, 1999, U.S. EPA and Amoco held a conference to discuss the January 11, 1999 FOV.

Count I

15. Paragraphs 1. through 14. of this Complaint are incorporated by reference as if fully set forth in this paragraph.

16. Since April 22, 1997, Amoco has operated a Group I process vent, identified as No. HT-504/HF505 in Amoco's NCS submitted on September 17, 1997 ("HT-504/HF505"), in violation of 40 C.F.R. § 63.113(a) by failing to: (1) reduce emissions of organic HAP using a flare; (2) reduce emissions of total organic HAPs by 98 weight-percent or to a concentration of 20 parts per million by volume; or (3) maintain a TRE index value, defined at 40 C.F.R. § 63.111, of greater than 1.0.

17. As a result of Amoco's failure to satisfy any of the compliance options in 40 C.F.R. § 63.113(a), Amoco violated Section 112 of the Act.

Count II

18. Paragraphs 1. through 17. of this Complaint are incorporated by reference as if fully set forth in this paragraph.

19. Amoco failed to conduct a performance test for HT-504/505 in accordance with 40 C.F.R. § 63.103(b)(3), which requires performance tests to be conducted at maximum representative operating conditions and allows owners or operators to operate the control or recovery device at maximum or

minimum representative operating conditions, whichever results in lower emission reduction.

20. Amoco impermissibly averaged the results of two separate performance tests of HT-504/HF505, in order to produce a TRE index value of 1.02 and satisfy the minimum TRE index value of 1.0 required by 40 C.F.R. § 113(a)(3).

21. By failing to conduct a performance test of HT-504/HF505 in accordance with the procedures set out in 40 C.F.R. § 63.103(b)(3), Amoco violated Section 112 of the Act.

Count III

22. Paragraphs 1. through 21. of this Complaint are incorporated by reference as if fully set forth in this paragraph.

23. Amoco failed to comply with 40 C.F.R. § 63.152(b)(2), which provides, "[f]or each monitored parameter for which a range is required to be established...the Notification of Compliance Status shall include...(ii) The rationale for the specific range for each parameter for each emission point, including any data and calculations".

24. Amoco conducted its performance test for HT-504/HF505 within a temperature range of 88-92 degrees Fahrenheit, while the monitoring range was 80-110 degrees Fahrenheit.

25. Amoco's Notification of Compliance Status for HT-504/HF 505 included no rationale, as required by 40 C.F.R. §

63.152(b)(2)(ii), for the temperature ranges used during the performance test of the unit.

25. By failing to provide a rationale in accordance with 40 C.F.R. § 63.152(b)(2)(ii), Amoco violated Section 112 of the Act.

Notice of Proposed Order Assessing a Civil Penalty

27. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA may assess a civil penalty not to exceed \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997.

28. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires the Administrator of U.S. EPA to take the following factors into consideration when determining the amount of any penalty assessment under Section 113:

- a. the size of Respondent's business;
- b. the economic impact of the proposed penalty on Respondent's business;
- c. Respondent's full compliance history and good faith efforts to comply;
- d. the duration of the violations alleged in the Complaint as established by any credible evidence;
- e. Respondent's payment of penalties previously assessed for the same violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and

h. such other factors as justice may require.

29. Based upon the facts alleged in this Complaint and the factors in paragraph 30 above, Complainant proposes to assess a civil penalty against Respondent of **\$181,685**. Complainant calculated this proposed penalty according to Section 113(e)(1) of the Act. In developing the proposed penalty, Complainant considered the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy, a copy of which is enclosed with this Complaint.

30. The Act requires that, when determining an appropriate penalty, U.S. EPA must consider the economic benefit a violator derives from the alleged violations. The penalty must be sufficient to preclude the violator from deriving monetary benefit from avoided or delayed expenditures that would have ensured compliance with the Act, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the Act. Respondent realized an economic benefit by virtue of the delay in controlling emissions from vent HT-504/HF-505 to the required level. The cost of these actions was \$175,725, and \$3,400 in annual expense, the delayed expenditure of which resulted in an economic benefit to Respondent of \$27,685.

31. Pursuant to the Act, Complainant considered the seriousness of Respondent's violations. One factor reflecting

the seriousness of the violations is the amount of the pollutant emitted as a result of the violation. Complainant compared the highest detected violation with the standard. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.

32. In considering the seriousness of the violation, Complainant considered the toxicity of the pollutant. Because methyl bromide, benzene and xylene are hazardous air pollutants that are known to cause death or serious irreversible illness, the proposed penalty includes an appropriate factor for the toxicity of the pollutant.

33. Pursuant to the Act, Complainant considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations commenced on April 22, 1997 and continued through October, 1998. Thus, Complainant based the penalty on an 18 month duration of violation.

34. Pursuant to the Act, Complainant considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth, as determined from a report prepared by the Dun & Bradstreet financial information service on August 27, 1993, is \$4,203,840,000. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business. The penalty policy allows the reduction of this factor

to 50% of the preliminary deterrence amount. The proposed penalty reflects such a reduction.

35. In determining an appropriate civil penalty under the Act, Complainant considered Respondent's compliance history and its good faith efforts to comply. The penalty does not reflect any enhancement based upon prior citations for Respondent's violation of environmental statutes.

36. Pursuant to the Act, Complainant considered the economic impact of the penalty on Respondent's business. Based on the best information available to Complainant at this time, including the August 27, 1993 Dun & Bradstreet report, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

37. Complainant developed the penalty proposed in this Complaint based on the best information available to U.S. EPA at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

38. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency
Region 5

P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Karl Karg, (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

39. Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint and/or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, you must specifically make the request in your Answer, as discussed in paragraphs 42 through 47 below. Any hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice

Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22.

Answer

40. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, **within 20 calendar days** of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such a date, in which case the deadline shall be extended to the next business day.

41. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied.

42. Your Answer shall also state with specificity:

- a. the circumstances or arguments which you allege constitute grounds for defense;
- b. the facts that you intend to place at issue; and
- c. whether you request a hearing as discussed in

paragraph 41 above.

43. Your failure to admit, deny or explain any material factual allegation in the Complaint will constitute an admission of the allegation. The Consolidated Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."

44. You must send a copy of your Answer and of any documents subsequently filed in this action to Karl Karg, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Karg at (312) 886-6720.

45. If you fail to file a written Answer within 20 calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. The proposed penalty will become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

Settlement Conference

46. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference,

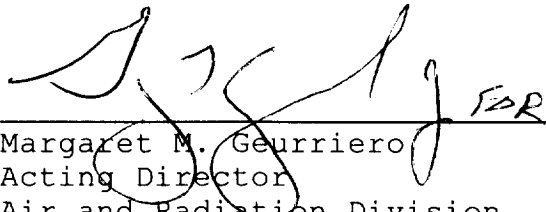
write to Shaun Burke, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Burke at (312) 353-5713.

47. Your request for an informal settlement conference does not extend the 20 calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because the parties hold such a conference. Any settlement that the parties reach as a result of a conference will be embodied in a consent order. Your agreement to a consent order issued pursuant to 40 C.F.R. § 22.27 will constitute a waiver of your right to request a hearing on any matter stipulated to therein.

Continuing Obligation to Comply

48. Neither assessment nor payment of a civil penalty shall affect your continuing obligation to comply with the Act or any other federal, state or local law or regulation.

7/20/99
Date


Margaret M. Geurriero
Acting Director
Air and Radiation Division

CAA-5-99-036

U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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In the Matter of BP Amoco Chemical Company

Docket No: ~~LAA-5-99~~-038

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CERTIFICATE OF FILING AND MAILING

PRO
I, Betty Williams, do hereby certify that I hand delivered the original of the foregoing Administrative Complaint and the Consent Agreement and Consent Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed accurate and true copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the complaint) by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:


Stephen A.K. Palmer, Esq.
BP Amoco Corporation
Mail Code 2104
200 East Randolph Drive
Chicago, Illinois 60601-7125

I also certify that a copy of the Administrative Complaint and Consent Order were sent by First Class Mail to:

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of air
Illinois Environmental Protection agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Harish Narayen Acting Regional Manager
Region I
Illinois Environmental Protection Agency
1701 First Avenue
Suite 1202
Maywood, Illinois 60153

on the 23rd Day of September 1999.


Betty Williams, Secretary
AECAS (IL/IN)

2005-09-23

CERTIFIED MAIL RECEIPT NUMBER:

P140895447